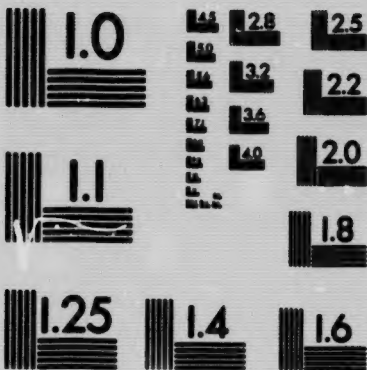




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"The Parasite" Case

OPEN LETTER

TO THE

PARLIAMENT OF CANADA

This Open Letter and accompanying Statement of Facts were authorized by a unanimous vote of the Managing Committee of the Ontario Branch of the Dominion Alliance at a meeting held on the 7th of April, 1919.

TO THE PARLIAMENT OF CANADA:—

Mr. Justice Sutherland, in giving judgment upon an application to prohibit the Police Magistrate of Toronto from proceeding with the present prosecution against Mr. Ben H. Spence, Secretary of the Ontario Branch of the Dominion Alliance, for publishing objectionable matter (The Parasite Case), quoted the judgment of Cockburn, C.J., in which he said:—

"Suppose it possible that there could be an abuse of his power by the Attorney General, or injustice in the exercise of it, the remedy is by holding him responsible for his acts before the great tribunal of this country, the High Court of Parliament."

Mr. Justice Sutherland applied the same principle to the action of the Department of Justice in connection with this case; hence this letter to you.

This is not a plea for mercy or exceptional consideration, but for that simple, plain, everyday justice which is the inherent right of the meanest citizen. This letter simply deals with four matters:

1. The entering of the first prosecution while the banning of the book in question was still under discussion by the Censorship Committee of the Privy Council.

2. The entering of a second prosecution in the face of the explicit letter of the Minister of Justice that if a nolle prosequi was entered, the Government "would not insist upon further prosecution."

3. The refusal to allow trial by jury, this being a reversal, without explanation, of a position taken by the Crown in May, 1918, when consent was given to a jury trial.

4. The action of the Censor in giving an interview to the press, and the publicity campaign by officials of the Government or persons in their confidence, obviously intended and calculated to prejudice the public mind.

These four matters are dealt with in detail in the accompanying statement.

No man dare impugn Mr. Spence's patriotism. Early in the war his services were placed at the disposal of his country, to be used in any capacity, at home or overseas, as a combatant or as a clerk. Indeed, the Director of National Service advised him personally that he was doing a greater national service in connection with the work to which he has devoted his life than in any other way he could suggest.

During the war he has taken as active a part as he was able upon the War Lecture Bureau, in connection with which he has made hundreds of addresses in different parts of the Province—all upon an entirely voluntary basis. His whole heart was in this great struggle; indeed it was this intense earnestness to help win the war that prompted the preparation of the book in question, the publication of which in Canada we believed would have done good. The Government deemed otherwise, and its judgment was loyally accepted. His reward has been prosecution upon prosecution. Why?

Mr. Spence stands to-day ready and willing to face a jury of his fellow-citizens upon this or any other charge that may be brought.

Fighting the liquor traffic is Mr. Spence's life's work. He is ever ready to take all that is coming to him in fair, square campaigning, but naturally objects to any part of the Administration of Canada, whether from prejudice, ignorance or connivance, being made an instrument in the hands of his opponents.

We cannot avoid the suspicion that behind all this there is some sinister influence that is as yet unrevealed; an influence or interest that seeks in some way to make capital by the pillorying of some person prominent in the temperance reform as a law-breaker; an interest that seeks to make use of alleged unpatriotism as part of a despicable game to exploit the soldiers of Canada for the benefit of the liquor traffic. Certainly, such a game is being played, this case is being used.

This alleged offence was committed in February, 1918. What a commentary upon the administration of Justice that an arch-criminal guilty of a serious offence, punishable by a fine of \$5,000, or five years' imprisonment, or both, should have been allowed at liberty, during war-time, to go up and down throughout this country, preaching in the pulpits of the churches, speaking upon the public platform, interviewing governments, writing in the newspapers, serving upon the War Lecture Bureau, giving, under the auspices of the Government, patriotic addresses, assisting in the Victory Loan Campaign, and now more than a year after the event and when hostilities have ceased, brought a second time into court.

Strange, too, that just now when a great prohibition campaign is imminent, both in the Province and Dominion, that this buried prosecution should be brought again from the dead; that advance notices of its resurrection should appear in the public press, these advance notices predicting just what the procedure would be, and what action the Crown would take in the case. The situation is an unprecedented one, and requires explanation.

Why these prosecutions at all when the Government was consulted before the book was issued, and a written undertaking given that their wishes would be respected?

Why should there be a second prosecution in defiance of the personally signed letter of the Minister of Justice himself?

Why the slanderous statements in the public press and the advance notices of the proposed prosecutions?

Why the stubborn refusal now of the Crown to allow a jury trial?

In the name of all that is honorable in our public life, fair in our democracy, decent in our citizenship, an answer should be given to at least some of these questions. Failing such answer the suspicion we have already expressed is not unfounded.

To tamely submit to what we consider an outrage and injustice would be a craven cowardice that would make us as unworthy as if guilty of the offences charged.

THE MANAGING COMMITTEE

Of the Ontario Branch of

The Dominion Alliance

Toronto, April 7th, 1919.

STATEMENT OF FACTS

The Managing Committee of the Ontario Branch of the Dominion Alliance, at a meeting held on the 21st of December, 1917, unanimously authorized the issuing of a Canadian edition of Mr. Arthur Mee's proposed new book, "The Parasite," dealing with drink conditions in Great Britain, the work to be revised and edited for circulation in Canada, by the Alliance Secretary, Mr. Ben H. Spence. There was no ban on the book at that time in Great Britain, Canada or anywhere else.

FIRST.—After the book in question was printed and delivered, and before it was banned, instead of distributing it, Mr. Spence voluntarily submitted copies to the Censorship Committee of the Privy Council and gave an undertaking in writing that whatever decision they reached would be loyally respected.

In a letter to Col. Ernest J. Chambers, Chief Press Censor, dated March 6th, Mr. Spence said:

"The book, copy of which I am sending you herewith, is not yet issued. It contains twenty-eight pages more than does the English edition of 'The Parasite,' and at the same time much of the matter of the original book is omitted. What matter is used is materially altered, making it entirely a new and different book. The book has not yet been circulated in Canada, nor will it be without the consent of the Department of the Secretary of State."

In a letter to the Secretary of State, under the same date, Mr. Spence said:

"It is not my intention to in any way go contrary to the instructions of your Department, and if this book is proscribed it will not be circulated; indeed, the whole edition, so far as I am concerned, will be destroyed; nor in the meantime, awaiting your decision, will it be circulated. I wish to be in every respect loyal to your decision."

"I do desire, however, that you withhold your decision in regard to the book until I have an opportunity of seeing you and presenting my side of the case."

Although at the time the great Prohibition Convention was being held in Toronto, with 1,500 delegates present from all over Ontario, and although Mr. Spence had at that time 2,000 copies of the book in his possession, no attempt was made to distribute them. The books were in the possession of Mr. Spence from the 28th of February, 1918, till the 15th of March, when they were seized by the police at the same time that Mr. Spence was summoned to the Police Court.

Following the correspondence, Mr. Spence went to Ottawa on March 13th, and by appointment interviewed the Minister of Justice, Hon. C. J. Doherty, who is also chairman of the Consorship Committee, and to whom the matter was referred by the Prime Minister. At this interview, Hon. Mr. Doherty was asked, and courteously agreed, that final decision of the Cabinet in the matter should be deferred until opportunity was given for presenting a full statement of the case. This decision of the Minister of Justice was concurred in by the Prime Minister, Sir Robert Borden, in a letter under date of March 15th, in which he said:

"I shall be quite willing to concur in any decision of the Consorship Committee to postpone final action until your memorandum shall have been received."

It was while the matter was under consideration by the Department at Ottawa that information was first laid against Mr. Spence and proceedings taken in the Toronto Police Court. This will be more clearly seen from the dates given in attached statement.

Thursday, February 28th.—First copies of "The Parasite" delivered to the Alliance office.

March 7th, 12th.—Exchange of correspondence and telegrams with Government, resulting in appointment for personal interview March 13th.

March 13th.—Minister of Justice interviewed. Consented to let matter stand to afford opportunity for presentation of a brief of the case.

March 15th.—Letter from Sir Robert Borden, confirming agreement with Minister of Justice to defer decision.

March 15th.—Memo submitted to Government as per arrangement.

March 15th.—Served with summons in Toronto Police Court proceedings, and books delivered to Toronto Police.

March 18th.—First appeared in Toronto Police Court.

The cordial relationship that existed with the Government is shown in the following extract from a letter sent by Mr. Spence to Sir Robert Borden on April 3rd:

"May I here express very profound regret at the diligent attempt in some quarters to represent me as fighting the Government. I am taking the liberty of attaching herewith a number of clippings, which I think prove conclusively that there has been the most cordial feeling towards yourself and the Government, and the warmest commendation of the action taken in regard to war-time prohibition, nor could or should it be otherwise."

The clippings enclosed, which were taken from The Pioneer, were as follows.

"While this decision is a disappointment and a matter of regret to many earnest temperance workers, yet it should be loyally accepted, for, at war time, it is essential that the authority of the Government be upheld and its orders obeyed. One thing we cannot afford, and that is a divided nation. As far as 'The Farnite' is concerned, therefore, unless the Government reverse its decision, the question is settled."

"The exigencies of war-time, however, make it emphatically necessary that whatever is done should be in harmony with the wishes of the present Government of Canada, for the Government has shown itself by its acts, as well as its words, to be earnestly desirous of promoting the welfare of Canada. For its splendid prohibitory enactments it cannot be too warmly commended."

This was acknowledged by the Premier in a letter on April 6th, in which he said:

"My Dear Sir:—

"I beg to acknowledge your letter of the 3rd instant, and I thoroughly appreciate your attitude in bowing to the decision of the Censorship Committee, which was approved by the Government."

SECOND.—The first case dragged on for eight months. The matter was the subject of correspondence between the Department of Justice at Ottawa and the Department of the Attorney-General of Ontario, and also between these Departments and Mr. Spence's solicitors.

In this correspondence, Hon. C. J. Doherty wrote the following letter to Mr. Spence's counsel:—

"Ottawa, April 30th, 1918.

"Dear Sir:—

"I have your letter of the 29th instant. I am writing the Attorney-General, stating to him that in the matter of the prosecution in the case of Rex vs. Spence, the Government is content to leave entirely to his judgment the question whether the same should be further proceeded with, and that if in his opinion the circumstances would justify the entry of a *nolle prosequi*, this Government would not insist on further prosecution.

"Yours sincerely,

"(Sgd.) CHAS. J. DOHERTY.

"W. E. Raney, Esq., K.C.,
"308-9 Bank of Hamilton Bldg.,
"Yonge St.,
"Toronto, Ont."

The substance of a letter from the Attorney-General of Ontario to the Minister of Justice was made public. Following is a quotation from the newspaper report at the time:

On April 30th Mr. Lucar received a letter from the Minister of Justice, saying that "under the circumstances it had been suggested that the prosecution be not

proceeded with." The Minister left it to the judgment of the Attorney-General, but added, "that the Government would not insist on further prosecution."

CASE WAS TRAVERSED.

Mr. Lucas replied on May 7th that if a true bill was returned, the case would be traversed to the present assizes.

On October 24th, Mr. Lucas wrote to the Minister of Justice again that, to have a jury trial with the attendant publicity and the reading of extracts from the book which had been banned, and which the Government didn't want made public, would bring about the very thing that the Government was trying to avoid.

SHOULD BE SUMMARY TRIAL.

"If it did go before a jury, and there was a disagreement or an acquittal, it would prove embarrassing. The proceedings, therefore, are stayed," wrote Mr. Lucas.

On November 15th, by direction of the Attorney-General of the Province, proceedings were stayed. The conditions laid down by the Minister of Justice were fulfilled. The following is an extract from the official report of the proceedings before Justice Masten:

MR. AGAR (Crown Counsel): The offence charged is having in the possession of the accused, objectionable matter contrary to the Consolidated Orders of Censorship.

Under the instructions of the Honourable the Attorney-General, I desire to have a direction to the Officer of the Court to make a record or entry that further proceedings are stayed by the direction of the Honourable the Attorney-General, under Section No. 962 of the Criminal Code.

HIS LORDSHIP: Does anybody appear for the defendant?

MR. RANEY: I appear for Mr. Spence, my Lord.

HIS LORDSHIP: Do you prefer to have a Jury called and a verdict of Not Guilty entered, or are you satisfied with what is suggested?

MR. RANEY: I would waive that, my Lord. I desire to say in justice to Mr. Spence and to avoid any misapprehension, that he is here, regretting nothing, retracting nothing, and that he is prepared to take his trial before a Jury. Of course, that now becomes unnecessary, in view of the action of the Crown, I waive, therefore, the formality of the empanelling of a Jury.

HIS LORDSHIP: Is there a form?

MR. AGAR: Nothing more than a direction given to the Officer of the Court to put on a record an entry that further proceedings are stayed by direction of the Attorney-General.

HIS LORDSHIP: Very well; that disposes of it.

Mr. Raney, having in his possession the definite assurance of the Minister of Justice, given over his own signature, that the

Government would not insist upon further prosecution, waived all formalities.

To our amazement, the signed letter of the Minister of Justice was treated as "a scrap of paper" and a second prosecution was launched within a few weeks for the same alleged offence.

When the case was called, Mr. Spence's solicitor interposed an objection and applied to the Supreme Court for an order of prohibition, which was refused. It was at this time that Justice Sutherland gave the decision before quoted.

THIRD.—When the first charge came before the Police Magistrate for hearing, counsel for Mr. Spence claimed the right of trial by jury. This right was at first controverted by the Crown Attorney, but upon inquiry by the Magistrate whether, if he had jurisdiction to make a committal for trial by jury, the Crown would consent, the Crown Attorney answered that he would, and the committal ensued.

The following is a newspaper report of the proceedings at that time.

"If he wants to be tried by a jury, and it is in my jurisdiction to send him, then you will agree?" asked Magistrate Denison.

"Certainly," assured Mr. Corley.

At that time Canada was at war, our country was in the thick of the fight.

When the case again came before the Toronto Police Court in January, 1919, upon the second information, the Crown reversed its position and insisted upon trial by magistrate.

Canada is now at peace and men are returning home. The Government of Canada has announced the relaxation of many restrictions that obtained during hostilities and modification has been made of some Orders-in-Council restoring the right of trial by jury.

Under date of January 24th, 1919, in a letter to the Attorney-General, Mr. Spence said:—

"The utmost contention of the Crown, as I understand it, is that the Crown has the right to decide whether the trial shall be by Jury or by summary conviction.

"My request is simply this: That if the matter comes to the point where a decision must be given by you as to how the Crown will proceed, that before you decide this matter, you will grant a hearing, when reasons will be advanced upon this one point, why, in this case, there should be a trial Jury.

"In other words, before the Crown changes its attitude as taken in March last, when consent was given to trial by Jury, I, as the party vitally concerned, desire to be heard."

"Indeed, Mr. Lucas, if the Crown will now agree that a Jury shall decide as to whether or not the book in question contains objectionable matter, I will gladly agree to waive all preliminary objections and facilitate in every possible way the forwarding of the case with the hope that it may be finally disposed of at the present assizes.

"All I want is that a jury of my fellow-citizens shall determine my guilt or innocence; for this I am ready at any time."

This request was refused in letters from the Attorney-General's Department, under date of March 26th, and April 1st.

FOURTH.—Some days before the first prosecution was launched in March, 1918, the Chief Censor at Ottawa gave an interview to the press which contained grossly unfair and untrue statements. These mis-statements were pointed out in a letter to the Censorship Committee under date of March 18th, in which Mr. Spence said:—

"Permit me to state that I consider this action of the Censor a most regrettable and flagrant violation of official etiquette. But not only do I object to the fact of public discussion in the press under the circumstances, but I must also take strong exception to the tone and matter of the public utterances of the Censor.

"In this connection permit a brief review of the facts of the case.

"The book in question, 'The Parasite,' was voluntarily submitted by me to the Censor and to the Government before being issued, with the distinct statement that whatever decision the Government arrived at would be loyally respected and obeyed. The whole question was then, would or would not the Government allow the circulation of this certain book, regarding which, to date, no action had been taken.

"The consideration we received from the Censor for this deference to the possible wishes of the Government in the matter is shown in the statements given. He lent himself to a newspaper campaign, which was as cowardly as it was unfair, being conducted by a couple of the Toronto papers against the temperance cause, the Alliance, as forwarding the cause and myself as Executive Officer of that organization. Out of courtesy to the Government that had the matter under consideration, I have absolutely refused to be interviewed or discuss in the public press in any way the matter which was under consideration, even declining to reply to the statements of the Censor.

"While the animus shown in the Censor's utterances are to be strongly deprecated, and the fact of him speaking to be deplored, it is further regrettable that he should be guilty of gross inaccuracy, if not deliberate mis-statement.

"May I say in this connection that when I saw the Censor personally on Wednesday, March 13th, he at once admitted having given the interview in question, read it over in my presence, and declared that it was a fair representation of what he had said to the reporter.

"He repeated to me personally with emphasis the statements and mis-statements made therein, telling me positively that there was no use in my discussing the matter with him; that his mind was made up. He indulged in personal abuse, going even so far as to impugn my patriotism.

"Permit me to point out several points in which, even had the Censor the right to speak, he was wrong in what he said:—

"The Censor stated that 'The Parasite' 'represented the Old Country as rotten through drink.' It does not. It represents the conditions in certain places as being 'rotten,' and they are, but the book also refers to the magnificent fight the Britons are making, and to the stamina, courage, nobility, of the British people.

"The Censor stated that 'The Parasite' represents Britain 'as being under the dictation and control of the liquor interests.' What the book really does is represent the liquor interests as seeking to dictate and control, and this is the actual fact with which Britons are faced, and which is admitted.

"The Censor states that 'The Parasite' 'contains exaggerated accounts of drunkenness in Britain.' It does not. It cites actual cases and happenings, and gives authority for every incident. It understates, rather than overstates, the case. There is not a citation that can be denied or controverted.

"The Censor states that 'The Parasite' gives no credit for the strides made in liquor control. Credit is given, but, naturally and rightly, emphasis is laid upon what remains to be done. Any real fighting man's attitude must be to face the foe ahead rather than content himself with celebrating victory until the battle is finally won.

"The Censor states that 'The Parasite' is 'calculated to cause disaffection towards the King.' The very contrary is the case. It extols the King; praises his noble self-sacrifice upon the temperance question, and urges upon the nation the example he has set. It is a call to 'Follow the King.'

"The Censor states that 'The Parasite' is calculated 'to create a feeling of unrest and dependence in the country.' There is that feeling now. It is caused in part because of the ravages of the liquor traffic. The book seeks to help remove this feeling by the sane, practical method of getting at the root of the matter and ridding the country of a contributing cause.

"The Censor states that 'The Parasite' 'is calculated to support the enemy propaganda, that the people of all grain-producing countries should not be asked to stint themselves of food for the purpose of sending grain to be made into beer and whiskey in England.' The direct opposite is the case. The book urges sacrifice and service. It plainly states that Canada is in this fight to a finish, and that

the waste of the liquor traffic in England, which cannot be denied, is but an added reason for Canadians to save and serve the more. 'The Parasite' deprecates very strongly anything in the nature of coercion of England along this line.

"The Censor represents himself as having held up the distribution of the book. To this day no order of any kind has been received by me from the Censor or any Department of the Government in regard to the withholding of the book from circulation. This action was entirely voluntary upon my part.

"The Censor actually stated in the interview that 'the question of prosecuting those responsible for the publication of such stuff is now under advisement.' This contemptuous, slurring reference to an honest, war-winning effort by a citizen as loyal as the Censor himself, is unworthy and insulting.

"The Chief Censor of Canada should retract and apologize, both for his officiousness and his words. I resent with all my soul his imputations. He transcends the function of Censor as I understand it, and I would be a craven to tamely submit to such arbitrariness; hence this emphatic protest."

By a peculiar coincidence, just a few days before the second prosecution was launched another statement appeared in the press, obviously from some person possessed of inside information. The extraordinary thing is that the first knowledge Mr. Spence should have had of these prosecutions should have come through these newspaper reports. Since when has it become the policy of a Department of the Government to advertise in the newspapers in advance the prosecutions that would be undertaken, and to attempt to set out in detail how the Crown would treat such prosecutions?

The Mee publications upon the liquor question have had a circulation in England, unhindered, of over 1,000,000 copies. The English book of the same name, "The Parasite," has been widely circulated in every other English-speaking country. In Australia, where some of these books were banned during the war, the ban was lifted some months ago, and they are again being freely circulated.